

BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

CHARLES CRIHFIELD,

Appellant,

v.

No. 34593

**STEVEN BROWN, and
THE HOME SHOW, LLC,**

Appellees.

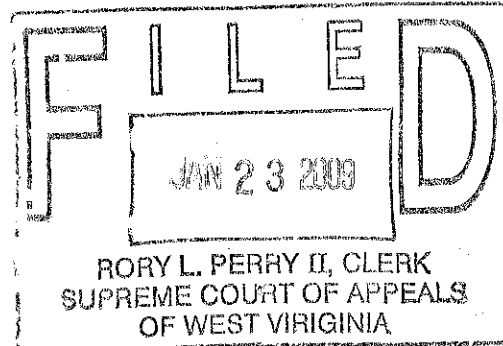
**REPLY BRIEF
ON BEHALF OF APPELLANT
CHARLES CRIHFIELD**

Date: January 22, 2009

Mark A. Ferguson, Esquire (WV Bar #1182)
Sprouse & Ferguson, PLLC
230 Capitol Street, Suite 300
Charleston, West Virginia 25301
Telephone: (304) 342-9100
Facsimile: (304) 342-9119

Orton A. Jones, Esquire (WV Bar # 1924)
Hedges, Jones, Whittier and Hedges
Post Office Box 7
Spencer, West Virginia 25276
(304) 927-3790

Counsel for Appellant



BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

CHARLES CRIHFIELD,

Appellant,

v.

No: 34593

**STEVEN BROWN, and
THE HOME SHOW, LLC,**

Appellees.

**REPLY BRIEF
ON BEHALF OF APPELLANT
CHARLES CRIHFIELD**

Appellant, Charles Crihfield, files his reply brief to address several points addressed in Appellees brief filed with regard to this appeal. The factual background and procedural history of this matter are essentially undisputed, and this appeal instead turns on the legal consequences of the Appellees' actions in terminating their original arbitration. Of course, what is disputed is Appellees' assertion in their brief, as a purported fact, that Appellant breached the restrictive covenant by soliciting employees. Appellant denies this, and in fact the deposition testimony of the employees in question also denied any such solicitation by the Appellant. Notwithstanding the parties dispute of the underlying allegations, there are no disputed facts as to the relevant procedural history governing the specific issue now before the Court.

As the fact statements of both parties concur, this matter had been set for final arbitration hearing on December 23, 2003. On the evening immediately before the hearing, Appellee Brown terminated the arbitration, instead determining to attempt to appeal to this Court the summary judgement previously granted by Judge Zakaib in 2003.

While the rules of the American Arbitration Association ("AAA"), which governed this arbitration, explicitly provide a procedure for postponement upon good cause, Brown did not seek such a postponement. Instead, he terminated the arbitration. Specifically, the letter from Brown's counsel dated December 22, 2003, stated that Brown elected to "withdraw this matter from arbitration."

Appellee's brief attempts to characterize the subsequent history of their effort to rearbitrate the matter as simply trying to set an arbitration hearing. While that characterization might have been applicable if Brown had initially secured a postponement consistent with the AAA rules, he did not. The undisputed fact is that Appellee Brown terminated and ended the 2003 arbitration. There is no way for him to now characterize the subsequent attempts at arbitration as other than new proceedings begun in an attempt to address the same matters originally subject to the arbitration in 2003.

The fact that the initial arbitration never proceeded to final hearing was solely the result of unilateral action of Appellee Brown. He cannot claim that, having terminated that proceeding five years ago, he is now merely trying to set a final hearing, as if none of the procedural history had occurred. While Appellees' brief tries to rewrite history to say that Brown was "suspending the arbitration hearing" pending his earlier appeal, what instead occurred was the complete and final withdrawal and termination of that arbitration.

If the Circuit Court order is allowed to stand, Appellees will have succeeded in their efforts to retroactively achieve a postponement that is both inconsistent with their actions in 2003, as well as in direct violation of the AAA rules. Brown may now wish that he had sought a postponement, rather than the termination of the arbitration, but it is too late to change history.

In conclusion, Appellant again asserts that this matter, having been previously subject to an arbitration which was unilaterally terminated by the Appellee, cannot now be subject to reinstitution arbitration. Therefore, Appellant requests that this Court overrule the Order of the Circuit Court of Kanawha County, West Virginia dated April 15, 2008, rule that further arbitration is precluded and thereby end the long and tortured procedural history of this dispute.

Respectfully submitted this 22nd day of January 2009.

CHARLES CRIHFELD

By Counsel



Mark A. Ferguson, Esquire (WV Bar # 1182)
Sprouse & Ferguson, PLLC
230 Capitol Street, Suite 300
Charleston, West Virginia 25301
(304) 342-9100



Orton A. Jones, Esquire (WV Bar # 1924)
Hedges, Jones, Whittier and Hedges
Post Office Box 7
Spencer, West Virginia 25276
(304) 927-3790

Counsel for Appellant

BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

CHARLES CRIHFELD,

Appellant,

v.

No: 34593

**STEVEN BROWN,
THE HOME SHOW, LLC, and
THE AMERICAN ARBITRATION ASSOCIATION,**

Appellees.

CERTIFICATE OF SERVICE

I, Mark A. Ferguson, counsel for Appellant do hereby certify that the foregoing **REPLY BRIEF ON BEHALF OF APPELLANT CHARLES CRIHFELD** has been served upon counsel of record as indicated below, by facsimile and by mailing a true and exact copy thereof to:

Frederick F. Holroyd, Esquire
Holroyd & Yost
209 West Washington Street
Charleston, West Virginia 25302

in a properly stamped and addressed envelope, postage prepaid, and depositing the same in the regular course of the United States mail this 22nd day of January 2009.



Mark A. Ferguson